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THOMAS R. KELLY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

THOMAS R. KELLY,

Plaintiff,

v.

WORTH HOLDINGS, LLC; E.S. WEST
COAST, LLC individually and doing
business as ENERGY SYSTEMS and DOES
1-20,

Defendants.

) Case No.: 3:17-cv-02466-EMC

) Action Filed: March 28, 2017

) **[PROPOSED] STIPULATED PROTECTIVE**
) **ORDER**

1. PURPOSES AND LIMITATIONS

Plaintiff THOMAS KELLY (“Plaintiff”) and Defendants E.S. WEST COAST, LLC dba ENERGY SYSTEMS, and WORTH HOLDINGS, LLC. (“Defendants”; Plaintiff and Defendants are collectively referred to herein as the “Participating Parties,” or either individually as a “Participating Party”) agree that disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective

1 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
2 or responses to discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below, that
5 this Stipulated Protective Order does not entitle them to file confidential information under seal;
6 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
7 applied when a party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
13 Civil Procedure 26(c) and/or that:

14 (a) Contain financial or other proprietary information that is held confidential by a party;

15 (b) Include an individual's personal identifying information (such as his or her name,
16 address, telephone number, social security number, driver's license number, bank account numbers,
17 or other private information) that a party to this litigation treats as confidential;

18 (c) Contain private information relating to an individual who is not a party to the present
19 litigation;

20 (d) Describe, contain, or disclose internal corporate or business information that is
21 legitimately held confidential within the business and not disclosed outside the business
22 organization, except to its agents, consultants, attorneys, accountants, or similarly situated affiliates
23 of the business;

24 (e) Contain medical records or other personal health care information, even if said health
25 care information is produced by a third party pursuant to stipulation or subpoena;

26 (f) Are encompassed by a confidentiality agreement executed by one or more of the parties;
27 or
28

1 (g) Contain information that otherwise qualifies for protection as confidential pursuant to
2 standards developed under applicable law.

3 (h) Confidential information produced pursuant to this Order shall be disclosed, revealed, or
4 disseminated only to the Court, the court personnel or staff, Participating Parties, counsel of record
5 for the Participating Parties, their associate attorneys, paralegals, secretaries, clerical staff and to the
6 “QUALIFIED PERSON(S)” designated below.

7 (i) Witnesses;

8 (ii) Experts and consultants retained by counsel in the prosecution, defense, or
9 settlement of this action;

10 (iii) Court reporter(s) employed in this action;

11 (iv) A witness at any deposition;

12 (v) A Participating Party, or an officer, director, managing agent, or employee of
13 a Participating Party; and

14 (vi) Any other person as to whom the Participating Parties agrees in writing.

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
16 as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

19 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
20 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
21 transcripts, and tangible things), that are produced or generated in disclosures or responses to
22 discovery in this matter.

23 2.6 Documents: (i) any “Writing,” “Recording,” “Photograph,” “Original,” and
24 “Duplicate”, as defined by Federal Rule of Evidence 1001, which have been produced in discovery
25 in this Proceeding by any person, and (ii) any copies, reproductions, or summaries of all or any part
26 of the forgoing.

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.8 House Counsel: attorneys who are employees of a party to this action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9 Information: the content of Documents or Testimony.

7 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
8 entity not named as a Party to this action.

9 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
10 but are retained to represent or advise a party to this action and have appeared in this action on
11 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.12 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.14 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
18 storing, or retrieving data in any form or medium) and their employees and subcontractors.

19 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
20 “CONFIDENTIAL.”

21 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
22 Producing Party.

23 3. SCOPE

24 The protection of this Protective Order may be invoked with respect to any Protected
25 Material produced or created in this action that has been designated as “CONFIDENTIAL.” Such
26 designations may be made by any Party or Non-Party producing materials in this action, or may be
27 made by a Party who determines, in good faith, that materials produced by a Non-Party contain
28 “Confidential” information even though not so designated by the Designating Party. In the event

1 that additional Parties join or are joined in this litigation, they shall not have access to materials
2 designated as “CONFIDENTIAL” pursuant to this Protective Order until they have executed and, at
3 the request of any Party, filed with the court their agreement to be bound by this Order.

4 The protections conferred by this Stipulation and Order cover not only Protected Material (as
5 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
14 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
15 Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
22 time limits for filing any motions or applications for extension of time pursuant to applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
25 Non-Party that designates information or items for protection under this Order must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards. The
27 Designating Party must designate for protection only those parts of material, documents, items, or
28 oral or written communications that qualify – so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept unjustifiably within
2 the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
4 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
5 encumber or retard the case development process or to impose unnecessary expenses and burdens on
6 other parties) expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated for
8 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
12 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
13 designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
16 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
17 legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or
18 portions of the material on a page qualifies for protection, the Producing Party also must clearly
19 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents or materials available for inspection
21 need not designate them for protection until after the inspecting Party has indicated which material it
22 would like copied and produced. During the inspection and before the designation, all of the material
23 made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
24 identified the documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
26 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
27 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
28 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins) and must specify, for each portion, the level of protection
2 being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony. When it is impractical to identify separately each portion of
6 testimony that is entitled to protection and it appears that substantial portions of the testimony may
7 qualify for protection, the Designating Party may invoke on the record (before or during the
8 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the
9 specific portions of the testimony as to which protection is sought and to specify the level of
10 protection being asserted. During the 21-day period, the testimony shall be treated as
11 “CONFIDENTIAL.” However, only those portions of the testimony that are appropriately
12 designated for protection within the 21 days shall be covered by the provisions of this Stipulated
13 Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
14 afterwards if that period is properly invoked, that the entire transcript shall be treated as
15 “CONFIDENTIAL.”

16 (c) for information produced in some form other than documentary and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
18 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
19 portion or portions of the information or item warrant protection, the Producing Party, to the extent
20 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the Designating Party’s
23 right to secure protection under this Order for such material. Upon timely correction of a
24 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
25 accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
2 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
6 by providing written notice of each designation it is challenging and describing the basis for each
7 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
8 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
9 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
10 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
11 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
12 Party must explain the basis for its belief that the confidentiality designation was not proper and
13 must give the Designating Party an opportunity to review the designated material, to reconsider the
14 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
15 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
16 has engaged in this meet and confer process first or establishes that the Designating Party is
17 unwilling to participate in the meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
20 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
21 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
22 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
25 motion including the required declaration within 21 days (or 14 days, if applicable) shall
26 automatically waive the confidentiality designation for each challenged designation. In addition, the
27 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
28 good cause for doing so, including a challenge to the designation of a deposition transcript or any

1 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
2 competent declaration affirming that the movant has complied with the meet and confer
3 requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the Designating
5 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
6 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
7 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
8 retain confidentiality as described above, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party's designation until the court
10 rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
15 the categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL
17 DISPOSITION).

18 Prior to reviewing any CONFIDENTIAL INFORMATION, each QUALIFIED PERSON
19 shall execute the Non-Disclosure Agreement in the form of Attachment A. The Participating Parties
20 must retain copies of any executed Non-Disclosure Agreements and must surrender said copies
21 following the adjudication or settlement of this action. CONFIDENTIAL INFORMATION may be
22 duplicated and transmitted to all persons identified in Paragraph 2.2(h).

23 Testimony taken at a deposition may be designated as CONFIDENTIAL INFORMATION
24 by making a statement to that effect on the record at the deposition. Arrangements shall be made
25 with the deposition reporter taking and transcribing information designated as confidential to bind
26 such portions of the deposition transcript containing information designated as confidential, and to
27 label such portions appropriately. Such deposition testimony shall be conducted only before those
28 persons identified in Paragraph 2.2(h) herein.

1 Participating Parties may also designate all or portions of any document, thing material,
2 testimony or other information derived there from as “ATTORNEYS’ EYES ONLY.” Material
3 designated as “ATTORNEYS’ EYES ONLY” (“ATTORNEYS’ EYES ONLY MATERIAL”) under
4 the Order may be used only for the purpose of prosecution, defense, discovery, mediation or
5 settlement of this action and not for any other purpose. ATTORNEYS’ EYES ONLY MATERIAL
6 is limited to such highly sensitive information such as any of the Participating Parties’ trade secrets
7 under the Uniform Trade Secrets Act (California Civil Code sections 3426, *et seq.*) or information
8 relating to Defendant’s finances. Information concerning or evidencing a Participating Party’s claim
9 for damages or offsets shall not be designated as ATTORNEYS’ EYES ONLY MATERIAL, and
10 shall be designated as CONFIDENTIAL INFORMATION, if designated at all.

11 ATTORNEYS’ EYES ONLY MATERIAL shall be so designated by stamping copies of the
12 document produced with the legend “ATTORNEYS’ EYES ONLY” or pre-designating any
13 inspection, including the product of any inspection, as “ATTORNEYS’ EYES ONLY.” Stamping
14 the legend “ATTORNEYS’ EYES ONLY” on the cover of any multi-page document shall designate
15 all pages of the document as ATTORNEYS’ EYES ONLY MATERIAL, stamping on a label on any
16 electronic storage medium shall designate the contents of such electronic storage medium as
17 ATTORNEYS’ EYES ONLY MATERIAL and pre-designating any inspection shall designate the
18 inspection and any product or reports of the inspection as ATTORNEYS’ EYES ONLY
19 MATERIAL. Whether or not any evidence or testimony is, in fact, designated as “ATTORNEYS’
20 EYES ONLY” shall not be determinative of whether it is entitled to lawful protection as such, and
21 the failure to make such a designation shall not constitute a waiver to do so.

22 ATTORNEYS’ EYES ONLY MATERIAL produced pursuant to this Order shall be
23 disclosed, revealed, or disseminated only to the Court, the court personnel or staff, and counsel of
24 record for the Participating Parties, their associate attorneys, paralegals, secretaries and clerical staff,
25 and to the “ATTORNEYS’ EYES ONLY QUALIFIED PERSONS” designated below:

26 (a) experts and consultants retained by counsel in the prosecution, defense, or
27 settlement of this action;

28 (b) court reporters(s) employed in this action;

1 (c) for the examination at a deposition of an employee or agent of the
2 Participating Party who designated such information as ATTORNEYS' EYES ONLY MATERIAL;

3 (d) any other person as to whom the Participating Parties agree in writing.

4 Prior to reviewing any ATTORNEYS' EYES ONLY MATERIAL each ATTORNEYS'
5 EYES ONLY QUALIFIED PERSON shall execute the Non-Disclosure Agreement in the form of
6 Attachment B. The Participating Parties must retain copies of any executed Non-Disclosure
7 Agreements and must surrender said copies following the adjudication or settlement of this action.

8 Testimony taken at a deposition may be designated as ATTORNEYS' EYES ONLY by
9 making a statement to that effect on the record at the deposition. Arrangements shall be made with
10 the deposition reporter taking and transcribing information designated as ATTORNEYS' EYES
11 ONLY to bind such portions of the deposition transcript containing information designated as
12 ATTORNEYS EYES ONLY MATERIAL, and to label such portions appropriately. During
13 deposition testimony designated as ATTORNEYS' EYES ONLY MATERIAL, such a deposition, or
14 portion thereof, shall be taken only in the presence of persons who are permitted access to such
15 information under this Order, unless agreed in writing between counsel.

16 Notwithstanding the above, the Participating Parties do not waive any right to challenge
17 whether the material designated or not designated as CONFIDENTIAL INFORMATION or
18 ATTORNEYS' EYES ONLY MATERIAL is properly designated or not designated as such, and do
19 not waive any right to challenge at any hearing, trial or other proceeding, whether such
20 CONFIDENTIAL INFORMATION is, in fact, confidential or private or whether such
21 ATTORNEYS' EYES ONLY MATERIAL is entitled to protection under the Uniform Trade Secrets
22 Act or any other legal or contractual protection.

23 The terms of this Order shall survive the final termination of this action and shall be binding
24 on the Participating Parties thereafter.

25 Within thirty (30) days of the termination or settlement of this action, the Participating
26 Parties must simultaneously exchange and surrender any CONFIDENTIAL INFORMATION and/or
27 ATTORNEYS' EYES ONLY MATERIAL and copies of any deposition transcripts designated as
28 CONFIDENTIAL INFORMATION and/or ATTORNEYS' EYES ONLY MATERIAL. Upon

1 surrendering to the other side CONFIDENTIAL INFORMATION and/or ATTORNEYS' EYES
2 ONLY MATERIAL and/or deposition testimony, the surrendering Participating Party must also
3 execute and furnish to the other side the Surrender of Confidential Information and Attorneys' Eyes
4 Only Material Testimony Agreement. Said exchange shall occur by FedEx overnight delivery.

5 Protected Material must be stored and maintained by a Receiving Party at a location and in a
6 secure manner that ensures that access is limited to the persons authorized under this Order.

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
8 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
9 information or item designated "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
11 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
12 this litigation and who have signed the "Confidential Information Non-Disclosure Agreement" that
13 is attached hereto as Exhibit A;

14 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
15 to whom disclosure is reasonably necessary for this litigation and who have signed the "Confidential
16 Information Non-Disclosure Agreement" (Exhibit A);

17 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
18 reasonably necessary for this litigation and who have signed the "Confidential Information Non-
19 Disclosure Agreement" (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
22 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
23 signed the "Confidential Information Non-Disclosure Agreement" (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
25 necessary and who have signed the "Confidential Information Non-Disclosure Agreement" (Exhibit
26 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
27 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
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1 bound by the court reporter and may not be disclosed to anyone except as permitted under this
2 Stipulated Protective Order; and

3 (g) the author or recipient of a document containing the information or a custodian or other
4 person who otherwise possessed or knew the information.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
6 OTHER LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
9 must:

10 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
11 of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
13 other litigation that some or all of the material covered by the subpoena or order is subject to this
14 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
16 Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the subpoena
18 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
19 before a determination by the court from which the subpoena or order issued, unless the Party has
20 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material – and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
25 THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in this
27 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
28 connection with this litigation is protected by the remedies and relief provided by this Order.

1 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
2 protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
4 Party's confidential information in its possession, and the Party is subject to an agreement with the
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the
7 information requested is subject to a confidentiality agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
9 litigation, the relevant discovery request(s), and a reasonably specific description of the information
10 requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
13 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
14 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
15 protective order, the Receiving Party shall not produce any information in its possession or control
16 that is subject to the confidentiality agreement with the Non-Party before a determination by the
17 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
18 seeking protection in this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
22 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
24 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
25 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
26 Be Bound" that is attached hereto as Exhibit A.

27 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
28 PROTECTED MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
2 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
3 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
4 modify whatever procedure may be established in an e-discovery order that provides for production
5 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
6 parties reach an agreement on the effect of disclosure of a communication or information covered by
7 the attorney-client privilege or work product protection, the parties may incorporate their agreement
8 in the stipulated protective order submitted to the court.

9 12. NO WAIVER OF PRIVILEGE; INADVERTENT PRODUCTION OF
10 PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

11 Nothing in this Stipulated Protective Order shall require production of Discovery Material
12 that a Party contends is protected from disclosure by the attorney-client privilege, the work-product
13 doctrine, common interest doctrine, or other privilege, doctrine, right, or immunity (collectively
14 “Privileged Information”). The Parties hereby stipulate, and the Court orders, that no inadvertent or
15 unintentional production of Privileged Information shall prejudice the Producing Party or otherwise
16 constitute a waiver or estoppel as to any such privilege, doctrine, right or immunity. Any Party that
17 inadvertently produces Privileged Information may obtain the return of those materials by promptly
18 notifying the recipient(s) and expressly articulating the basis for the asserted privilege or immunity.
19 The recipient(s) shall gather and return all copies of the inadvertently produced Privileged
20 Information to the Producing Party, or certify to the Producing Party that they have been destroyed
21 and/or deleted.

22 13. MISCELLANEOUS

23 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
24 its modification by the court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
26 no Party waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
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1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 13.3 Filing Protected Material. Without written permission from the Designating Party or a
4 court order secured after appropriate notice to all interested persons, a Party may not file in the
5 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
7 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
8 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
9 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
10 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
11 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
12 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13 13.4 The Parties shall meet and confer regarding the procedures for use of Confidential
14 Materials at trial and shall move the court for entry of an appropriate order.

15 13.5 This Stipulation and Protective Order may be executed in counterparts.

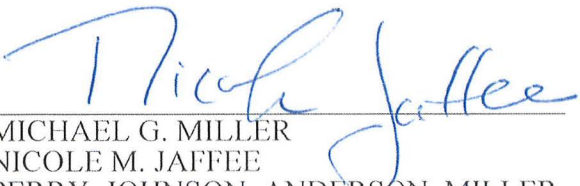
16 14. FINAL DISPOSITION

17 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
18 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
19 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
20 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
21 the Protected Material is returned or destroyed, the Receiving Party must submit a written
22 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
23 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
24 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
25 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
27 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
28 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant


1 and expert work product, even if such materials contain Protected Material. Any such archival copies
2 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
3 Section 4 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: March 23, 2018

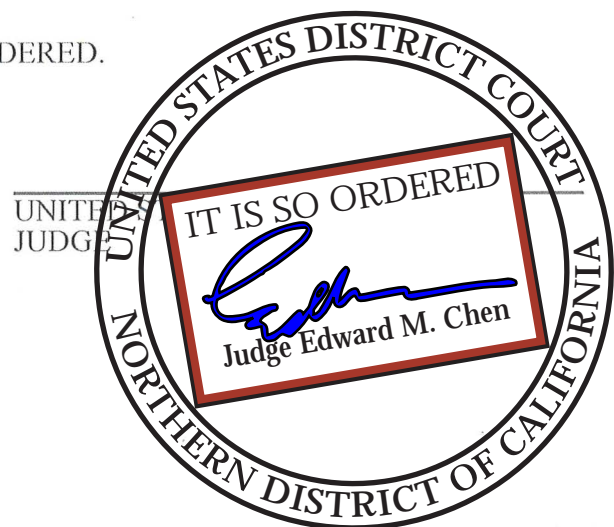
6
7 
8 MICHAEL G. MILLER
9 NICOLE M. JAFFEE
10 PERRY, JOHNSON, ANDERSON, MILLER
11 & MOSKOWITZ, LLP.
12 Attorneys for Plaintiff
13 THOMAS R. KELLY

14 Dated: March 23, 2018

15 
16 KATHERINE S. CATLOS
17 BRANDON K. KAHOSH
18 KAUFMAN DOLOWICH & VOLUCK, LLP
19 Attorneys for Defendants
20 WORTH HOLDINGS, LLC, E.S. WEST
21 COAST, LLC, ENERGY SYSTEMS

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 Dated: 3/23/2018



ATTACHMENT A

CONFIDENTIAL INFORMATION NON-DISCLOSURE AGREEMENT

The undersigned hereby agrees that:

(1) I have had the opportunity to review the Stipulated Protective Order (“Order”) in this action.

(2) I agree that I am a “QUALIFIED PERSON” as to set forth in the Order.

(3) As a QUALIFIED PERSON, I will not disclose any of the CONFIDENTIAL INFORMATION to any third person and further agree that my use of any CONFIDENTIAL INFORMATION shall only be for the prosecution, defenses, discovery, mediation and/or settlement of this action, and not for any other purpose.

(4) As a QUALIFIED PERSON, I further agree that on the termination or settlement of this action, I will surrender all CONFIDENTIAL INFORMATION which is in my possession, custody, or control in the manner set forth in paragraph 18 of the Order.

Dated: _____, 20____

[Print Name]

[Sign Name]

ATTACHMENT B

ATTORNEYS' EYES ONLY MATERIAL

NON-DISCLOSURE AGREEMENT

The undersigned hereby agrees that:

(1) I have had the opportunity to review the Stipulated Protective Order ("Order") in this action.

(2) I agree that I am an "ATTORNEYS' EYES ONLY QUALIFIED PERSON" as set forth in the Order.

(3) As an ATTORNEYS' EYES ONLY QUALIFIED PERSON, I will not disclose any of the ATTORNEYS' EYES ONLY MATERIAL to any third person and further agree that my use of any ATTORNEYS' EYES ONLY MATERIAL shall be for the prosecution, defense, discovery, mediation and/or settlement of this action, and not for any other purpose.

(4) As an ATTORNEYS' EYES ONLY QUALIFIED PERSON, I further agree that on the termination or settlement of this action, I will surrender all ATTORNEYS' EYES ONLY MATERIAL which is in my possession, custody, or control in the manner set forth in paragraph 18 of the Order.

Dated: _____, 20____

[Print Name]

[Sign Name]